

E-filed 03/07/2008

NOT FOR CITATION
IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

VICTOR GAMALY, on behalf of himself and
others similarly situated

Plaintiffs,

v.

TUMI, INC., Does 1 through 10

Defendants.

Case Number C-07-04758 JF

ORDER¹ STAYING ACTION

On February 15, 2008, during oral argument on a motion to dismiss brought by Defendant Tumi ("Tumi"), Tumi suggested that the instant case should be stayed pending the outcome of a decision by the Ninth Circuit in *Soualian v. International Coffee & Tea, LLC*, and possible Congressional action on the Credit and Debit Card Receipt Clarification Act of 2007. Tumi noted that Judge Illston has issued a similar stay in *Lopez v. Gymboree Corp.*, C07-087 (N.D. Cal. Nov. 1, 2007). *Lopez* contains allegations nearly identical to those in the instant case. In *Lopez*, Judge Illston noted that "the Ninth Circuit's decision [in *Soualian*] is likely to illuminate the issues surrounding class certification." Accordingly, she determined that it would be prudent not to adjudicate the plaintiff's motion for class certification prior to the Ninth Circuit's decision in *Soualian*.

¹ This disposition is not designated for publication and may not be cited.

1 This Court did not address Tumi's request for a stay at the February 15 hearing or in its
2 subsequent order dated February 25, 2008 denying Tumi's motion to dismiss because Plaintiffs
3 had not had an opportunity to brief the issue. Instead, the Court requested that the parties submit
4 simultaneous letter briefs on or before February 29, 2008 as to why a stay should not be issued.
5 On February 28, 2008, counsel for Plaintiff Victor Gamaly informed the Court that Plaintiff does
6 not oppose a stay in the instant case pending the Ninth Circuit's decision in *Soualian*.
7 Accordingly, the instant action will be stayed until further order of the Court. Counsel is directed
8 to advise the Court of any developments in *Soualian*.

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10 IT IS SO ORDERED.

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12 DATED: March 7, 2008

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JEREMY FOCHEL
United States District Judge

1 Copies of this Order have been sent to:

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4 Stephanie Anne Sheridan stephanie.sheridan@sdma.com